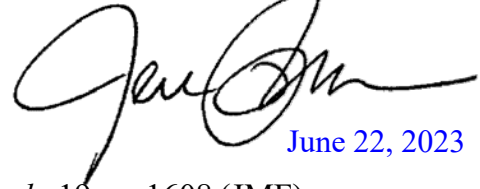


June 16, 2023

Via ECF

Honorable Jesse Furman
United States District Judge
Southern District of New York
40 Centre Street, Room 2202
New York, New York 10007

The motion to seal is granted temporarily. The Court will assess whether to keep the materials at issue sealed or redacted when deciding the underlying motions. The Clerk of Court is directed to terminate ECF No. 440. SO ORDERED.



June 22, 2023

Re: *City of Philadelphia, et al. v. Bank of Am. Corp., et al.*, 19-cv-1608 (JMF)

Dear Judge Furman:

Pursuant to Rule 7 of the Court's Individual Rules and Practices in Civil Cases, and the Stipulation and Order Regarding Redaction and Sealing Process for Class Certification Briefing (Dkt. No. 358), Defendants, on behalf of all parties, hereby seek leave to file by ECF, Defendants' Reply Memorandum of Law in Further Support of Defendants' Motion to Exclude Expert Testimony and supporting documents (the "Daubert Reply Papers") (Dkt. Nos. 424-425) with certain confidential documents and information redacted.¹ An index listing all material that the parties seek to file in redacted form is attached as Exhibit 1. The parties have met and conferred regarding each's proposed redactions, and no party opposes the requests of any other party.

The parties' respective justifications for redacting those materials under *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006), and its progeny, are set forth below. While the parties acknowledge that the materials to be redacted are judicial documents to which the presumption of public access attaches, they believe that in balancing the competing considerations against the presumption of access, the Court should grant the parties' motion.

Defendants' information. Defendants have substantially narrowed the scope of their confidentiality designations with respect to Defendants' discovery material previously designated as Confidential or Highly Confidential and filed, quoted from, or referenced in the Daubert Reply Papers. Defendants wish to keep confidential and have filed in redacted form the Hubbard Reply Report, which discusses specific and sensitive information related to Defendants' inventory levels on specific CUSIPs.

Filing this document in redacted form is consistent with the standards for sealing in the Second Circuit. Courts in the Second Circuit and the Southern District of New York have held that it is appropriate to seal commercially sensitive "business information that might harm a

¹ Defendants' Reply Memorandum of Law in Further Support of Defendants' Motion to Exclude Expert Testimony ("Daubert Reply Brief"), along with the supporting Declaration of Brandon Gould ("Gould Declaration") and exhibits, were filed on May 15, 2023, with restricted access. Dkt. Nos. 424-425. The Reply Declaration of Glenn Hubbard ("Hubbard Reply Report") was included as an exhibit to the Gould Declaration. Dkt. No. 425-1.

litigant's competitive standing." *New York v. Actavis, PLC*, No. 14-CV-7473 (RWS), 2014 WL 5353774, at *3 (S.D.N.Y. Oct. 21, 2014); *see also City of Providence v. BATS Glob. Markets, Inc.*, No. 14-CV-2811 (JMF), 2022 WL 539438, at *2 (S.D.N.Y. Feb. 23, 2022) (allowing for sealing of documents based on potential harm to competitive standing). In order to avoid creating a competitive disadvantage for a litigant, courts regularly allow the sealing of commercially sensitive information, including "trade secrets, confidential research and development information, marketing plans, revenue information, pricing information, and the like." *Tyson Foods, Inc. v. Keystone Foods Holdings, Ltd.*, No. 1:19-CV-010125 (ALC), 2020 WL 5819864, at *2 (S.D.N.Y. Sept. 30, 2020).

The document Defendants wish to keep confidential falls within the scope of confidential and sensitive commercial information that should be sealed. The Hubbard Reply Report includes information related to inventory levels on specific CUSIPs. *See* Dkt. No. 425-1 at p. 32. Disclosure of this information would allow competitors to evaluate Defendants' specific risk limits and inventory systems, and to adjust their processes to compete against Defendants accordingly.

Plaintiffs' information. The materials Plaintiffs wish to keep confidential and have filed in redacted form are numerical figures from Professor Schwert's expert reports cited in Defendants' Daubert Reply Brief and the Hubbard Reply Report. Professor Schwert's expert reports quantify the impact of Defendants' alleged artificial inflation of VRDO rates, and calculate his initial estimate of class damages. Such financial figures are proper subjects of redaction. *See Valelly v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 2022 U.S. Dist. LEXIS 140126, at *3-4 (S.D.N.Y. Aug. 4, 2022) (granting application to seal expert report that contained, *inter alia*, the "financial implications of [the defendant bank's] rate decisions"). Consistent with the legal authority cited above, Plaintiffs request the sealing of only that sensitive material from the expert reports of Professor Schwert.

* * *

Accordingly, on behalf of the parties, Defendants respectfully request that the portions of Defendants' Daubert Reply Brief and the Hubbard Reply Report, highlighted in green (as indexed in Exhibit 1 hereto) be permitted to be filed in redacted form. All such materials are being filed with this letter-motion in both redacted and highlighted form, in accordance with Rule 7.C.iii of the Court's Individual Rules and Practices in Civil Cases.

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* Signatures used with permission pursuant to S.D.N.Y. ECF Rule 8.5(b).

cc: All counsel of record (via ECF)

Exhibit 1

Document	Request for Redactions or to Seal in Full?	Location of Requested Redactions	Redactions or Sealing Requested By
Reply Memorandum of Law in Further Support of Defendants' Motion to Exclude Expert Testimony (Dkt. 424)	Redactions	Page 2	Plaintiffs
		Page 3	Plaintiffs
		Page 6	Plaintiffs
		Page 7	Plaintiffs
Exhibit 24 to the Declaration of Brandon Gould – Reply Declaration of Glenn Hubbard (Dkt. 425-1)	Redactions	Page 10	Plaintiffs
		Page 11	Plaintiffs
		Page 12	Plaintiffs
		Page 15	Plaintiffs
		Page 16	Plaintiffs
		Page 32	Defendants
		Page 32	Plaintiffs
		Page 34	Plaintiffs
		Page 37	Plaintiffs
		Page 38	Plaintiffs